

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9805 of 2018

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Suman Kumar Mishra Son of Late Vishnu Kant Mishra Resident of Dhanga West , P.O. Dhanga East, P.S. - Arer, District - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar.
2. The Excise Commissioner, Bihar.
3. The District Magistrate, Siwan, District Siwan.
4. The Sub-Divisional Magistrate, District - Siwan.
5. The Station House Officer, Muffasil, Sadar Siwan, District - Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prince Kumar Mishra
For the Respondent/s : Mr. Anil Kumar Sinha -GA1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 18-12-2018 Heard learned counsel for the petitioner and learned counsel representing the State.

Petitioner in the present case is seeking provisional release of the vehicle (Tata Sumo Victa) bearing Registration No. BR-32C-6111, Engine No. 483BL51CSZ708818 and Chassis No. 446254CSZ918031 which has been seized in connection with Muffasil P.S. Case No. 07 of 2017 dated 04.01.2017 registered under Section 41(i) of the Bihar Prohibition and Excise Act, 2016 as well as under Section 272, 273, 308 and 420 of the Indian Penal Code.

Learned counsel representing the petitioner submits that in fact, the vehicle of the petitioner was stolen away for which a case being Kaluahi P.S. Case No. 87 of 2016 dated 27.10.2016 has been registered against the unknown persons. It is his submission that the



stolen vehicle was being used by the accused persons for carrying illicit liquor and in course of that the vehicle has been seized giving rise to this case. The quantity of illicit liquor said to have been seized from the vehicle is 2700 Liters.

Learned counsel submits that the vehicle is presently lying under open sky in the police station and for last almost two years the vehicle is loosing its road worthiness day by day. Learned counsel further points out that there is no safety and security to the vehicle and, therefore, the valuable parts of the vehicle may be stolen away in the present condition.

For the purposes of provisional release of the vehicle in question, learned counsel submits that considering the legal position that the confiscation proceeding intends a civil consequence and in ultimate analysis if the vehicle is confiscated, the same would be liable to be sold and the State shall appropriate the amount collected on account of sale of the vehicle.

It is further submitted that the petitioner is at present ready to protect the interest of the State by providing a Bank Guarantee to the extent of the value of the vehicle as indicated in the insurance documents and to that extent if the interest of the State is protected, there should not be any hindrance in the matter of provisional release.

Learned counsel for the petitioner submits that at present confiscation proceeding is pending as the petitioner has received



notice of confiscation. According to him, the provisional release may be ordered subject to final decision in the confiscation proceeding.

Learned counsel representing the State however submits that the investigation in respect of the case lodged in respect of the vehicle are still pending and at this stage considering that the vehicle was involved in carrying illicit liquor, this court may not exercise its discretion to grant provisional release of the vehicle, however, at the same time, learned counsel also submits that if at all the court is willing to consider the provisional release of the vehicle the interest of the State will be required to be protected.

Having heard learned counsel for the petitioner and State, we find that there is no dispute on fact that one F.I.R. with respect to the theft of the vehicle was registered on 27.10.2016 and about 2 ½ months thereafter the vehicle was seized as was found allegedly involved in carrying illicit liquor. The truth in course of investigation has yet to come. The confiscation proceeding is still pending and it is a fact that the vehicle is lying under open sky for the last about two years without there being any safety and security.

In these circumstances, we are willing to consider the provisional release of the vehicle in question subject to certain terms and conditions in order to protect the interest of the State.

In the given facts and circumstances where vehicle in question is lying under open sky, losing it's road worthiness, keeping in mind the interest of the State as well, we direct that pending



finalization of the confiscation proceeding, the vehicle in question be released provisionally in favour of the petitioner on the petitioner's producing the document of ownership and registration in his name before the District Magistrate, Siwan (Confiscating Authority) with one surety along with irrevocable Bank Guarantee to the extent of the value of the vehicle as indicated in the insurance document. The petitioner while submitting the Bank Guarantee and surety shall also furnish the following affidavits/undertakings:-

(i) That the vehicle in question has never been involved in any offence of similar nature in past and shall not be indulged in similar offence in future.

(ii) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release of the vehicle a Panchnama would be prepared by the confiscating authority wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama in course of trial.

Subject to the above conditions, following the views



expressed by the Hon’ble Division Bench of this Court and in tune with that, we dispose of this application.

The release shall be allowed within a period of 7 days from the date of submission of the surety along with Bank Guarantee and the undertakings as stated above. This would, however, be subject to the final order passed in confiscation proceeding.

Accordingly, this application stands disposed of.

(Jyoti Saran, J)

Rajeev/R.R. Ojha

(Rajeev Ranjan Prasad, J)

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